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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92051140
Party	Defendant Product Source International, LLC
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Submission	Answer
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Date	04/22/2010
Attachments	NIC OUT Answer and Aff Def.pdf (5 pages)(18401 bytes)

**IN THE UNITED STATES PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL & APPEAL BOARD**

Leonid Nahshin,
153/36 Beer-Sheva
Beer-Sheva, 84746
ISRAEL
Plaintiff-Petitioner
vs.

Product Source International, LLC
13 Coleman Road
Berlin, NJ 08009
UNITED STATES
Defendant-Respondent

Opposition No.: 92/051,140
Registration No.: 3,350,041
Mark: NIC-OUT
Interlocutory Attorney:
Ann Linnehan, Esq.

ANSWER TO AMENDED PETITION TO CANCEL

COMES NOW Defendant-Respondent Product Source International, LLC (“PSI”) and by its attorneys responds to the AMENDED PETITION TO CANCEL filed by Plaintiff-Petitioner Leonid Nahshin on February 11, 2010, with the following numbered Paragraphs corresponding to the numbered Paragraphs of the AMENDED PETITION TO CANCEL.

1. Denied. On information and belief, it is asserted that Plaintiff-Petitioner does not now and has not ever owned the mark NIC-OUT (“Mark” hereinafter).
2. Denied. On information and belief, it is asserted that Plaintiff-Petitioner has not ever used and has no *bona fide* intent ever to use the Mark in commerce as defined by U.S. trademark law.
3. Denied. On information and belief, it is asserted that Plaintiff-Petitioner has not ever used and has no *bona fide* intent ever to use the Mark in commerce as defined by U.S. trademark law. As such, it is asserted that Plaintiff-Petition cannot have

used the Mark in commerce continuously since October 1, 2000, or continuously since any other date.

4. Denied. On information and belief, Plaintiff-Petitioner has not invested any sums of money in the “promotion of the [Mark] and Petitioner’s goods in the United States,” since Plaintiff-Petitioner does not own the mark and has never used the mark in commerce as defined by U.S. trademark law.

5. Denied. On information and belief, Plaintiff-Petition has not “developed a valuable reputation and goodwill” in the Mark, nor has Plaintiff-Petitioner “achieved a following among the relevant consuming public” at any time, much less “prior to the filing, registration, and/or priority date of Registrant’s mark...identified in U.S. Registration No. 3,350,041.” This is so because Plaintiff-Petitioner does not own the Mark and has never used the Mark in commerce as defined by U.S. trademark law.

6. Admitted.

7. Admitted.

8. Admitted.

9. Denied. It is respectfully submitted that Defendant-Respondent first used the Mark in connection with “the goods covered by its registration” *at least as early as* December of 2003, and perhaps earlier.

10. Denied. On information and belief, Plaintiff-Petitioner does not own the Mark, has not ever used the mark in commerce as defined by U.S. trademark law, and cannot therefore achieve priority of use over Defendant-Respondent, regardless of when Defendant-Respondent’s first use occurred.

11. Denied. It is respectfully submitted that no consumer confusion is possible, inasmuch as Plaintiff-Petitioner does not own the Mark and has never used the Mark in commerce as defined by U.S. trademark law.

12. Denied. It is respectfully submitted that no consumer confusion is possible, because Plaintiff-Petitioner does not own the Mark and has never used the Mark in commerce as defined by U.S. trademark law.

13. Denied. It is respectfully submitted that Plaintiff-Petitioner will not be damaged by the continued registration of the Mark, since Plaintiff-Petitioner does not own the Mark and has never used the Mark in commerce as defined by U.S. trademark law.

Affirmative Defenses

Defendant-Respondent asserts the following affirmative defenses in response to Plaintiff-Petitioner's AMENDED PETITION TO CANCEL: unclean hands, laches, fraud, mistake, waiver, and acquiescence.

Furthermore, Plaintiff-Petitioner does not own the Mark and has not ever used the Mark in commerce as defined by U.S. trademark law. Consequently, Plaintiff-Petitioner will not be damaged by Defendant-Respondent's continued registration of the Mark and therefore lacks standing to bring the present action.

Date: April 22, 2010

Respectfully Submitted:

/Anthony J. DiMarino/

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CERTIFICATE OF SERVICE

I, Anthony J. DiMarino III, Esquire, counsel to Defendant-Respondent, Product Source International, LLC , hereby certify that the foregoing ANSWER TO AMENDED PETITION TO CANCEL was sent this 22 day of April, 2010, via facsimile and regular mail to the below-named counsel for Plaintiff-Petitioner Mr. Leonid Nahshin:

Vera Chernobylsky, Esquire
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Woodland Hills, CA 91364

/Anthony J. DiMarino, III/
Anthony J. DiMarino III, Esq.